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No. 14

In the

Supreme Court of the United States

(OCTOBER TERM, 1952)

ROBERT M. WIEMAN; NANCY KENT ZIEBUR; WERNER C. BAUM; SAMUEL HUNT LEE, JR.; MALCOLM CORRELL; LILLIAN A. SCHMOE, and LUELLA NIETZ,
Appellants,

VERSUS

PAUL W. UPDEGRAFF; THE BOARD OF REGENTS OF THE OKLAHOMA AGRICULTURAL COLLEGES; A. S. J. SHAW, State Treasurer of the State of Oklahoma, and WILBURN C. CARTWRIGHT, State Auditor of the State of Oklahoma,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

BRIEF OF APPELLEE, PAUL W. UPDEGRAFF

PAUL W. UPDEGRAFF,
Norman, Oklahoma,
Attorney for Appellees.

September, 1952.

UTTERBACK TYPESETTING CO., 13 SOUTH WALKER, OKLAHOMA CITY, PH. 3-8780

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The brief filed by this Appellee in the Supreme Court of Oklahoma, the Court below, answers the questions raised by the Appellants in this Court and is adopted as the Appellee's brief herein.

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No. 35160

In the Supreme Court of the State of Oklahoma

THE BOARD OF REGENTS OF THE OKLAHOMA AGRICULTURAL COLLEGES, A. S. J. SHAW, State Treasurer of the State of Oklahoma, and WILBURN C. CARTWRIGHT, State Auditor of the State of Oklahoma,
Plaintiffs in Error,

Also

ROBERT M. WIEMAN, NANCY KENT ZIEBUR, WERNER C. BAUM, SAMUEL HUNT LEE, JR., MALCOLM CORRELL, LILLIAN A. SCHMOE, LUELLA R. NIETZ and ABOULHASSAN ZIRAKZADEK,
Intervenors, Plaintiffs in Error,

VERSUS

PAUL W. UPDEGRAFF,
Defendant in Error.

BRIEF OF PAUL W. UPDEGRAFF, DEFENDANT IN ERROR

The parties will be referred to as they appeared below. The defendant in error, Paul W. Updegraff, will be called the plaintiff; the plaintiff in error, the Board of Regents of the Oklahoma Agricultural Colleges, will be called the Board of Regents; the plaintiff in error, A. S. J. Shaw, State Treasurer of the State of Oklahoma, will be called the Treasurer; the plaintiff in error, Wilburn C. Cartwright,

State Auditor of the State of Oklahoma, will be called the Auditor; and the plaintiffs in error, the intervenors, will be called the intervenors.

STATEMENT OF THE CASE

This is an action filed on behalf of the plaintiff for injunction against the defendants hereinabove named to enjoin, after the effective date of the Act, the payment of compensation or expenses to employees of the Board of Regents of the Oklahoma Agricultural Colleges who have not taken the oath or affirmation required by Enrolled House Bill No. 8 of the Twenty-third Legislature. A temporary restraining order was issued and the case was heard upon permanent injunction and a permanent injunction was granted. Certain interpleaders were permitted to intervene.

At the outset, we agree with the interpretation in paragraph one of the Attorney General's letter dated April 30, 1951, addressed to Governor Murray wherein the opinion reads:

> "* * * the payment of compensation or expenses to public officers and employees who have not taken said oath is not prohibited until on and after May 9, 1951. * * *"

We do not necessarily agree with the reasons given for so holding but rather would say the language of the statute is explicit. Therefore, payment of compensation or expenses to public officers and employees can be made by the Board of Regents of the Oklahoma Agricultural Col-

leges, the State Auditor, and State Treasurer, without regard to the oath, for the first nine days in May, 1951.

Petition

(C-M. 7-9)

"Comes now the plaintiff and for cause of action against the defendants alleges and states:

"1. That he is a tax payer and citizen of the State of Oklahoma.

"2. That the defendant, the Board of Regents of the Oklahoma Agricultural Colleges, has charge of all monies appropriated by the State Legislature of the State of Oklahoma and the power and authority to expend all funds appropriated by the legislature or by congress for said colleges.

"3. That A. S. J. Shaw, defendant herein, is the State Treasurer of the State of Oklahoma.

"4. That the defendant, Wilburn C. Cartwright, is the State Auditor of the State of Oklahoma.

"5. That the 1951 legislature of the State of Oklahoma passed a bill known as the 'loyalty oath' wherein it is provided that any person employed by the State of Oklahoma, before receiving any monies from the State Treasurer, shall subscribe to a 'loyalty oath.'

"6. That the defendant, the Board of Regents of the Oklahoma Agricultural Colleges, have in their employ certain teachers, professors, and other employees, some of whom are citizens of the State of Oklahoma and others are visiting professors from other countries and are non-citizens of the United States, who have refused, failed and neglected to subscribe to the oath as provided by law, and the said persons who have

failed to subscribe to the oath, on or about the 9th day of May, 1951, will prepare and file a salary claim for the month of May, 1951.

"7. That by reason of their failure to subscribe to the said loyalty oath, each employee failing to so subscribe and file the same with the head of their respective institution is not entitled to be paid from state funds for the month of May, 1951. That plaintiff has no adequate remedy at law.

"WHEREFORE, plaintiff prays judgment against the defendants, the Board of Regents of the Oklahoma Agricultural Colleges, and A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, perpetually enjoining and restraining them from paying any of the employees of the Oklahoma Agricultural Colleges for the month of May, 1951, or any other month until such period of time as each employee paid has subscribed to the oath as provided in Enrolled House Bill No. 8 passed by the Twenty-third Legislature, and that the defendants hereinabove named shall be enjoined from paying salaries or reimbursement for expenses incurred by any teacher, professor and other employees; and that the defendants herein named or institution, in and for which the person executing the oath or affirmation is employed or appointed or elected, shall be enjoined from accepting after midnight May 9, 1951, any oaths other than the oaths such teachers, professors and other employees may have filed with the proper head or public authority for said institution, provided that the teachers, professors and other employees who are on authorized leave on May 9th, 1951, may take and subscribe said oath or affirmation by midnight June 8, 1951.

(Signed) "Paul W. Updegraff,
"Attorney for Plaintiff."

Answer
(C-M. 60-62)

"Comes now the above-named defendants, and each of them, and in answer to the petition of plaintiff herein and in response to the 'Temporary Restraining Order' issued in this cause, allege and state:

"1. That the material allegations of fact set forth in the petition are not sufficient to constitute a cause of action in favor of plaintiff and against defendants.

"2. Defendants admit the material allegations of fact set forth in Paragraphs 1 to 6 of plaintiff's petition.

"3. That the teachers, professors and other employees referred to in Paragraph 6 of the petition were employed by the defendant, Board of Regents for the Oklahoma Agricultural and Mechanical Colleges, prior to April 9, 1951 (the effective date of the act mentioned in Paragraph 5 of the petition) to teach and otherwise serve in said colleges on a contract basis during the fiscal year ending June 30, 1951, and hence, by virtue of that part of Section 15, Article 2 of the Oklahoma Constitution which provides that no law 'impairing the obligation of contracts shall ever be passed,' the provisions of said act (House Bill No. 8 of the Twenty-third Oklahoma Legislature) are not applicable to said contracts or to the May, 1951 salary claims mentioned in said petition, and therefore the defendant board, treasurer and auditor should not be enjoined from approving and paying the claims referred to in Paragraph 6 of the petition.

"4. That the teachers, professors and other employees referred to in Paragraph 6 of the petition have not been, and cannot lawfully be, employed by the defendant Board to teach or otherwise serve in the colleges mentioned in the petition during the fiscal year ending June 30, 1952, or during any succeeding fiscal year, except after the beginning of each such year,

hence the prayer for injunctive relief set forth in the petition as to salary claims of said teachers, professors and other employees for any such future fiscal year, is premature and not susceptible of fulfillment.

"WHEREFORE, premises considered, defendants respectfully ask the court to deny plaintiff the injunctive relief prayed for by him.

"Mac Q Williamson
"Attorney General of Oklahoma

"Fred Hansen
First Assistant Attorney General
"Attorneys for Defendants

"(verified.)"

Reply

(C-M. 69-70)

"Comes now the plaintiff and for his reply to the answer of the defendants and each of them filed herein, and denies each and every material allegation set forth in the answer except those that may be hereinafter specifically admitted.

"Plaintiff specifically denies that Enrolled House Bill No. 8 passed by the Twenty-third Legislature impairs the obligations of contract existing between the Board of Regents for the Oklahoma Agricultural and Mechanical College and teachers, professors, and other employees, and that said Act is applicable to all contracts and to the May, 1951, salary claims, and therefore the defendant Board of Regents, State Treasurer, and State Auditor should be enjoined from approving and paying the said claims.

"Plaintiff says that the Act as passed by the legislature is constitutional and valid in all things.

"Plaintiff specifically denies that other employees, except teachers and professors, are employed on a basis of the school term and says they are employed only on the basis of month to month, do not hold any written or oral contract, and may be discharged at any time by the defendant Board of Regents for the Oklahoma Agricultural and Mechanical College or the President of the institution or the heads of departments under whose supervision the employee may work.

"Plaintiff specifically denies that the prayer for injunctive relief set forth in the petition as to salary claims for these said teachers, professors and other employees for any future fiscal year is premature, and says that unless the defendants and each of them are enjoined that monies will be paid from the state treasury in direct violation of law.

"WHEREFORE, premises considered, plaintiff respectfully asks this court to grant him permanent injunctive relief as prayed for in his petition.

(Signed) "Paul W. Updegraff
"Paul W. Updegraff
"Plaintiff

"(Verified)."

THE EVIDENCE

Stipulations (C-M. 86-90)

(See Intervenors Brief, pages 15-18.)

Journal Entry of Judgment

(C-M. 235-246)

Findings of Facts

"The Court finds the facts in this case to be as set forth in the stipulations entered into by and between the parties, and that the parties have agreed that the case comes on for hearing on the permanent injunction."

Conclusions of Law

"1st: The court concludes that the plaintiff is a taxpayer and citizen of the State of Oklahoma and a proper party to bring this action. It is so ordered.

"2nd: The Court concludes that the effective date of Enrolled House Bill No. 8 passed by the Twenty-third Legislature is midnight May 9th, 1951; and it is so ordered.

"3rd: The Court concludes that the teachers, professors, and other employees of the defendant, Board of Regents, may be paid from State funds for the first nine days of May, 1951; and it is so ordered.

"4th: The Court concludes that each teacher, professor and employee who has wilfully or negligently failed to take and subscribe to the oath, as provided in Section 2, Enrolled House Bill No. 8, by midnight May 9th, 1951, cannot be paid from State funds, after midnight May 9th, 1951, and concludes that any teacher, professor and employee absent from the State May 9th, 1951, on authorized leave, may be paid regularly and as provided by law during the time of any such absence on authorized leave, and up to and including thirty (30) days after terminating such leave and returning to work or to the duties of the office or employment of such person; and thereafter in usual and proper form, provided that such person has, during such thirty-day period after returning from said leave,

taken said oath in manner and form as prescribed by law, unless an honest mistake or clerical error has been made in any oath that might have been filed, in which event a correction may be made or an amended oath filed, to clearly set it out; it is so ordered.

"5th: The Court concludes that each teacher, professor and employee who has taken and subscribed to an oath by midnight May 9, 1951, and filed it with the officer, agency, authority, department, commission, or institution in and for which the person executing the oath or affirmation is employed or appointed or to which said person is elected, and which oath taken and subscribed is not the oath provided in Section 2 of the Act, cannot take and subscribe to a new oath, unless an honest mistake or clerical error has been made in the preparation of the oath signed; that such teacher, professor and employee who fails to take and subscribe to the oath or affirmation required in said Act has forfeited his or her right to receive pay; it is so ordered.

"6th: The Court concludes that the intervenors, and each of them, did not take and subscribe to the oath as provided in Section 2 of the Act and wilfully refused to take that oath and by reason thereof the Board of Regents is enjoined from paying them, and their employment is terminated. It is so ordered.

"7th: The Court concludes that the words 'if necessary', following the phrase, 'I will take up arms in the defense of the United States in time of War, or National Emergency, if necessary', mean that the Congress of the United States within the powers granted them under the Constitution of the United States and the various selective service laws passed by the Congress will determine when and if it is necessary for any person taking and subscribing to the oath in this

Act to bear arms; that such proviso is constitutional. It is so ordered.

"8th: The Court concludes that non-citizens of the United States employed by the State must take and subscribe to the oath as provided in the Act, and that the words, 'if necessary' following the phrase, 'I will take up arms in the defense of the United States in time of War, or National Emergency, if necessary', as applied to them does not violate any of the constitutional rights guaranteed them under the Fourteenth Amendment, or other Constitutional or statutory provisions of the United States, or the Constitution of any statutory provisions of the State of Oklahoma, nor does it violate any treaty agreement with other nations or between the signers of the United Nations. The Congress of the United States, in various selective service legislative acts, has provided for the type of military service, if any, the nationals of other countries must render, taking into consideration the treaty agreements with each country and between the United Nations. It is so ordered.

"9th: The Court concludes that that portion of the said oath which requires the teachers, professors and employees of the defendant Board of Regents, including these intervenors, to state:

> 'I am not affiliated directly or indirectly * * * with any agency, party, organization, association, or group whatever which has been officially determined by the United States Attorney General or other authorized agency of the United States to be a communist front or subversive organization; * * *'

and to further state:

> '* * * that within the five (5) years immediately preceding the taking of this oath (or affirmation)

> I have not been a member * * * of any agency, party, organization, association, or group whatever which has been officially determined by the United States Attorney General or other authorized public agency of the United States to be a communist front or subversive organization,'

are valid provisions of the law. The Court concludes that said provisions are constitutional in all respects and are applicable to any such organization which prior to April 9, 1951, has been officially determined by the United States Attorney General or other authorized agency of the United States to be a communist front or subversive organization, and the words 'officially determined' mean such listed organizations as have been afforded an opportunity to present their case; *Joint Anti-Fascist Refugee Committee, Petitioner, v. J. Howard McGrath, Attorney General of the United States et al.* (decided by the Supreme Court of the United States April 31, 1951), and it was the express intention of the legislature, by the words 'has been' to mean only those organizations found to be subversive prior to the effective date of the Act, to-wit: April 9, 1951, and does not apply to any organization declared to be subversive after April 9, 1951, and the Court concludes that the legislature may adopt by reference any report or lists of the United States Attorney General or other authorized agency of the United States wherein it has been officially determined that any organization is a communist front or other subversive organization. It is so ordered.

"10th: The Court concludes that the legislature had the right, within the 'police power', to enact legislation affecting the vital welfare of the State and Nation, and that Enrolled House Bill No. 8 passed by the Twenty-third Legislature does not impair the obligation of contracts; it is so ordered.

"11th: The Court concludes and does hereby take judicial notice of the threat to our liberties and way of life, and that prior to the passage of this Act a person could obtain a job in our colleges, universities and public schools without declaring his loyalty to his employer, the people of the State of Oklahoma, and of the stress of the times and the need for protection from our enemies, foreign and domestic, and of the advocacy of persons, groups and organizations to overthrow our government by force and violence; and that the legislature of Oklahoma, in the exercise of its police powers, has wide discretion in determining what is necessary, as an exercise of police power, to protect the general welfare of its people, and so far as constitutional issue is concerned the power of the State, when otherwise justified, is not diminished because of a private contract which may be affected. All contractual obligations between the Board of Regents and teachers, professors and employees, including the intervenors, are subject to Enrolled House Bill No. 8 of the Twenty-third Legislature; it is so ordered.

"Now, it is the further order of this Court that in the event the Board of Regents found that an honest mistake has been made in the oath so filed, in the name, designation of the position held, or any other clerical error, that said error may be corrected by the taking of a new oath.

"12th: The Court concludes that the injunction should be made permanent in all things as prayed in plaintiff's petition; it is so ordered.

"13th: The Court concludes that there may be clipped to the original oath a statement of a non-citizen, if he so desires, the following statement:

'I further state that I am a citizen, or subject, of _____, and that I have taken the foregoing

oath, subject to my allegiance to, and rights and obligations, as a citizen, or subject, of .....

'Dated this ..... day of ....., 1951.'

and upon timely filing thereof, his rights to receive compensation shall not be prejudiced.

"14th: In view of the findings and judgment of this Court, this 21st day of May, 1951, made in this litigation and this hearing, to the effect that non-nationals may be permitted to execute an additional and explanatory statement along with their oath of allegiance, the Court now finds and concludes that all non-nationals who have heretofore, because of misunderstanding or honest mistake, have failed, up to this time, to execute the oath in the manner and form as provided herein, together with the explanatory statement, as provided herein, that all such non-nationals may have a reasonable time after the execution of this judgment, this date, by the Court, within which to properly prepare, take and file said oath, not to exceed 10 days; and it is so ordered.

"IT IS THEREFORE ORDERED, ADJUDGED and DECREED by the Court that the injunction should be made permanent in all things as set forth in the conclusions of law, and that intervenors' petition for mandatory injunction is in all things denied, and costs are assessed against the defendants and the intervenors. Exceptions allowed to all parties."

We now proceed to the following propositions. For the sake of brevity each proposition will be stated, then discussed.

Proposition I.

Oath does not impair obligation of contract.

The non-Communist statement here involved is a condition of employment; there is no issue as to freedom of religion, thought, or speech. In our brief we will cite the unbroken line of cases throughout the country upholding the requirement of a non-Communist statement as a condition of employment.

Any person holding a contract of employment with the Board of Regents of the Oklahoma Agricultural Colleges for a fixed period ending on or prior to the expiration of the current fiscal year, who failed to subscribe to the oath as required by law, cannot be paid compensation after midnight May 9, 1951.

The passage of the "oath law" does not impair the obligations of contracts under Section 15, Article 2 of the State Constitution.

In the case of *State ex rel. Roth, Trustee* v. *Waterfield, Court Clerk*, 167 Okla. 209, 29 Pac. (2d) 24, our Court held:

> "The right of the Legislature to act under the police power of the state is a part of the existing law at the time of the execution of every contract, and as such becomes in contemplation of law a part of that contract.
>
> "Situations may arise which justify an extension of the police power of the state to remedy economic conditions, but when such power is undertaken to be exercised with that object in view to the detriment of one class of persons, appropriate provisions for protecting the rights of that class of persons and pro-

viding compensation for rights infringed upon should be provided."

This principle of law is supported by the Supreme Court of the United States in a mortgage moratorium case in the case of *East N. Y. Sav. Bank* v. *Hahn*, 66 Sup. Ct. 69, 326 U. S. 230, 90 L. Ed. 34, 160 A. L. R. 1279, holding:

"When a widely diffused public interest has become enmeshed in a network of multitudinous private arrangements, the authority of the state to safeguard vital interests of its people is not to be denied by abstracting one such arrangement from its public context and treating it as though it were an isolated private contract constitutionally immune from impairment.

"The protective power of the state to safeguard vital interests of its people may be treated as an implied condition of every contract and as such as much part of contract as though it were written into it, whereby state's exercise of its power enforces and does not impair a contract.

"The police power is an exercise of sovereign right of the government to protect the general welfare of the people, and is paramount to any rights under contracts as between individuals. U. S. C. A. Const. art 1, Sec. 10.

"A state legislature has wide discretion in determining what is necessary as an exercise of police power, to protect the general welfare of its people, and, so far as constitutional issue is concerned, the power of the state when otherwise justified is not diminished because a private contract may be affected. U. S. C. A. Const. art. 1, Sec. 10."

All contractual obligations are subject to police power. See cases digested U. S. Supreme Court Digest, Constitutional Law, Key No. 117.

Certainly the public interest today in the protection of this nation against its enemies, within and without, from the overthrow of our Government by force and violence, gives to the Legislature wide discretion in determining what is necessary in exercising its police power to protect the general welfare of the people. The oath law is a protection against disloyalty to our Government.

We assert that the Supreme Court of Oklahoma and the Supreme Court of the United States will take judicial knowledge of conditions affecting this nation by reason of the Hiss trials, the Communist trials in New York, the *Fuch* case, and the disloyalty of many of our citizens in giving treasonable aid to our enemies, and that the ideology of Communism means an advocacy of the overthrow of our existing Government by force and violence. See *Denver Producing and Refining Co.* v. *State et al.*, 199 Okla. 171, 184 Pac. (2d) 961.

Proposition II.

The cases explicitly and unanimously hold an oath or affirmation of loyalty may lawfully be required as a condition to public employment.

This case is concerned with the validity of a non-Communist affirmation as a condition of employment. It

is recognized as a general principle,[1] and has been applied specifically in many cases holding (1) that a policy against employing Communists is valid and does not involve an illegal political test, and (2) that the requirement of the anti-Communist oath or affirmation is a valid implementation of such a policy.

In *American Communications Ass'n* v. *Douds* (1950), 339 U. S. 382, the Supreme Court upheld the constitutionality of amended Section 9(h) of the Labor Relations Act. This section requires that officers of certain labor unions execute an affidavit (quoted 339 U. S. 385-386) stating among other things that the affiant "is not a member of the Communist party or affiliated with such party." The statutory penalty for noncompliance is that the union concerned loses privileges granted by the statute (339 U. S. 385), a more serious thing, in the judgment of the Court, than mere "loss of position" by an individual (339 U. S. 392). In the main opinion by CHIEF JUSTICE VINSON the Court said (pp. 390-392):

"There can be no doubt that Congress may, under its constitutional power to regulate commerce among

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[1] **McAuliffe v. Mayor etc. of City of New Bedford** (1892), 155 Mass. 216, 29 N. E. 517, quoted in **Steiner v. Darby** (1948), 88 Cal. App. (2d) 481, 487; **Christal v. Police Commission** (1939), 33 Cal. App. (2d) 564, 568 (upholding dismissal of police officer for refusing on constitutional grounds to answer questions of the grand jury).

In the **McAuliffe** case, which involved a policeman dismissed for violating a department rule against soliciting political funds, the court, speaking through Justice Holmes, overruled the policeman's claim that the rule was invalid "as invading the petitioner's right to express his political opinion" and said (29 N. E. 517, quoted 88 Cal. App. 2d 487):

> "One answer to this argument * * * is that there is nothing in the constitution or the statute to prevent the city from attaching obedience to this rule as a condition to the office of policeman, and making it part of the good conduct required. **The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman.** There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of this contract."

the several States, attempt to prevent political strikes and other kinds of direct action designed to burden and interrupt the free flow of commerce. *We think it is clear, in addition, that the remedy provided by sec. 9(h) bears reasonable relation to the evil which the statute was designed to reach. Congress could rationally find that the Communist Party is not like other political parties* in its utilization of positions of union leadership as means by which to bring about strikes and other obstructions of commerce for purposes of political advantage, and that many persons who believe in overthrow of the Government by force and violence are also likely to resort to such tactics when, as officers, they formulate union policy.

"The fact that the statute identifies persons by their political affiliations and beliefs, which are circumstances ordinarily irrelevant to permissible subjects of government action, does not lead to the conclusion that such circumstances are never relevant. In re Summers, 325 U. S. 561 (1945); *Hamilton v. Regents*, 293 U. S. 245 (1934).

* * * * * * * *

"In this respect, sec. 9(h) is not unlike a host of other statutes which prohibit specified groups of persons from holding positions of power and public interest because, in the legislative judgment, they threaten to abuse the trust that is a necessary concomitant of the power of office.

"If no more were involved than possible loss of position, the foregoing would dispose of the case."

The present case *does involve no more than loss of position*, and the above ruling in itself, we submit, demonstrates the absence of merit in petitioners' political test contention. In the *Douds* case, however, the Supreme Court

went on to uphold Section 9(h), including the requirement of the non-Communist oath on broader grounds. Stating that "Communists, we may assume, carry on legitimate political activities" (339 U. S. 393)—petitioners' contention here—and further that "Beliefs are inviolate," the Court pointed out that the oath actually did discourage the lawful exercise of political freedoms since in practical fact unions would be discouraged from electing Communists to office (339 U. S. 393). The Court held, nevertheless, that the statute including the requirement of the oath, was valid (339 U. S. 393-412). During this discussion the Court emphasized again the distinction between a non-Communist requirement which "punishes" or "forbids" and one which is a condition of office or employment. The Court said (p. 408):

> "As thus construed, we think that the 'belief' provision of the oath presents no different problem from that present in that part of the section having to do with membership in the Communist Party. Of course we agree that one may not be imprisoned or executed because he holds particular beliefs. *But to attack the straw man of 'thought control' is to ignore the fact that the sole effect of the statute upon one who believes in overthrow of the Government by force and violence—and does not deny his belief—is that he may be forced to relinquish his position as a union leader.* That fact was crucial in our discussion of the statute as it relates to membership in the Communist Party."

And further (p. 409):

> "To hold that such an oath is permissible, on the other hand, is to admit that the circumstances under which one is asked to state his belief and the consequences which flow from his refusal to do so or his

disclosure of a particular belief make a difference. The reason for the difference has been pointed out at some length above. *First, the loss of a particular position is not the loss of life or liberty.* We have noted that the distinction is one of degree, and it is for this reason that the effect of the statute in proscribing beliefs—like its effect in restraining speech or freedom of association—must be carefully weighed by the courts in determining whether the balance struck by Congress comports with the dictates of the Constitution. But it is inaccurate to speak of sec. 9(h) as 'punishing' or 'forbidding' the holding of beliefs, any more than it punishes or forbids membership in the Communist party."

The Supreme Court in the *Douds* case expressly distinguished *West Virginia Board of Education* v. *Barnette* (1943), 319 U. S. 624. The *Barnette* case involved a State statute requiring children in public schools to salute the flag and pledge allegiance, and the statute provided criminal penalties for noncompliance on both the children and their parents. Such a case is not relevant to a case involving an anti-Communist oath, affirmation, or statement *as a condition of employment.* The Supreme Court in the *Douds* case distinguished the *Barnette* case on that ground, saying (339 U. S. 404, n):

"In the *Barnette* case, the Court was careful to point out that the sole interest of the State was in securing uniformity of belief by compelling utterance of a prescribed pledge, and that refusal to comply with the State order resulted in punishment for both parent and child" (The court then quoted, 319 U. S. 630-631).

As noted above the *Douds* case also answers such arguments by defendants as that the means adopted by the Legislature to implement the policy that Communists shall not be allowed to teach are "naive indeed." Holding the anti-Communist oath to be a reasonable means of effecting the policy behind it, the Supreme Court said (339 U. S. 390-391):

> "We think it is clear, in addition, that the remedy provided by sec. 9(h) bears reasonable relation to the evil which the statute was designed to reach."

Reference should also be made to the opinion of MR. JUSTICE JACKSON in the *Douds* case. This summarizes grounds which justified Congress in making different provision as to Communists than as to other parties (339 U. S. 422-433). The opinion opens as follows (p. 422):

> "If the statute before us required labor union officers to forswear membership in the Republican Party, the Democratic Party or the Socialist Party, I suppose all agree that it would be unconstitutional, but why, if it is valid as to the Communist Party?
>
> "The answer, for me, is in the decisive differences between the Communist Party and every other party of any importance in the long experience of the United States with party government."

The opinion further states (339 U. S. 424):

> "From information before its several Committees and from facts of general knowledge, Congress could rationally conclude that, behind its political party facade, the Communist Party is a conspiratorial and revolutionary junta, organized to reach ends and to use methods which are incompatible with our con-

stitutional system. Although and compressed grouping of this data would permit Congress to draw these important conclusions as to its distinguishing characteristics."

The five conclusions stated by MR. JUSTICE JACKSON, omitting his well documented supporting discussion, are:

"1. The goal of the Communist Party is to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate (339 U. S. 425).

"2. The Communist Party alone among American parties past or present is dominated and controlled by a foreign government (339 U. S. 427).

"3. Violent and undemocratic means are the calculated and indispensable methods to attain the Communist Party's goal (339 U. S. 429).

"4. The Communist Party has sought to gain this leverage and hold on the American population by acquiring control of the labor movement (339 U. S. 430).

"5. Every member of the Communist Party is an agent to execute the Communist program" (339 U. S. 431).

Passing now from the *Douds* case, earlier Federal cases which uphold amended Section 9(h) of the Labor Relations Act, including the requirement of the non-Communist oath, were *Inland Steel Co.* v. *National Labor Relations Board* (7 Cir., 1949), 170 Fed. (2d) 247, 265-266, and *National Maritime Union of America* v. *Herzog* (D. C., 1948), 78 Fed. Supp. 146, 162-164.

On September 23, 1950, Congress enacted the Internal Security Act of 1950 (Public Law No. 831, c. 1024, 81st

Cong., 2d Sess.). This statute covers forty pages of small print in the U. S. Code Congressional Service (1950, No. 10, pp. 3740-3780), but parts of it are quoted and the rest is summarized in the appendix of this brief (pp. I-VII). This statute, while providing that mere membership or office-holding in a Communist organization is not an offense (Sec. 4[f], U. S. Code Congressional Service, *supra*, p. 3745), also provides that no members of a Communist organization required to register may hold any nonelective office or employment under the United States or with any defense facility (Sec. 5, quoted appendix to this brief, pp. VI-VII). Non-Communist statements from individuals plus registration and reports from Communist organizations are among the means which the statute provides for its implementation. These provisions would be unconstitutional if petitioners' contentions were accepted as law.

In the Appendix (pp. VIII-X) is printed an extract from the Congressional Committee's report recommending passage of the Internal Security Act of 1950. This sets forth the facts regarding Communism which required and justified the legislation—facts similar to those noted by the Supreme Court in the *Douds* case (339 U. S. 382, *supra*).

Among many matters bearing on implementation of the statute the Congressional Committee noted that "*20 States require teachers to take loyalty oaths*" (Appendix, p. X). There is, to the best of our knowledge, no case invalidating such a requirement in any state. Cases upholding the oath are *L'Hommedieu* v. *Board of Regents of the University of the State of New York* (1950), 276 App. Div. 494, 95 N. Y. S. (2d) 443, and the companion

case of *Thompson* v. *Wallin* (1950), 276 App. Div. 463, 95 N. Y. S. (2d) 784, 301 N. Y. 476, 95 N. E. (2d) 806, upholding the same statute, this time in an action to enjoin its enforcement brought against the Regents by the Chairman and Secretary of the Communist Party in the state. See also concurring opinion in *Hammond* v. *Lancaster* (Md., 1950), 71 Atl. (2d) 483, 485.

The Court said (95 N. E. [2d] 811-812):

> "Concerned, as we are, with the qualification for public employment in the vital field of education, we regard the law here challenged as an effort by the Legislature to insert a new strand in the mesh by which a screening process is accomplished in the selection of those who teach the State's children. Strands which serve a like purpose are found in section 3002 of the Education Law, which denies to any person the right to serve as a teacher in a public school until he or she shall have taken and subscribed an oath to support the Federal and State Constitutions; also in section 801 *id.*, which requires that in all public schools instruction shall be given in 'patriotism and citizenship.' As the Legislature has authority over the discipline and efficiency of public service, we think its judgment, as expressed in the restrictive provisions of the statute under review, bears a reasonable relation to the legislative purpose to safeguard the public school system (Citing *American Communications Ass'n* v. *Douds*, 339 U. S. 405, and many other cases). Those cases stand for the legal principle which prompted JUDGE HOLMES —as he then was—to write in *McAliffe* v. *Mayor of New Bedford*, 155 Mass. 216, 220, 29 N. E. 517, the familiar statement: 'The petitioner may have a constitutional right to talk politics but he has no constitutional right to be a policeman'!"

In Maryland there is a constitutional oath (Maryland Constitution, Art. 1, Sec. 6), together with a constitutional provision—"nor shall the Legislature prescribe any other oath of office than the oath prescribed by the Constitution" (Maryland Declaration of Rights, Art. 37). Maryland nevertheless requires a loyalty oath of teachers in state supported schools. In *Hammond* v. *Lancaster* (Md., 1950), 71 Atl. (2d) 483, the validity of this oath was attacked by a teacher in Morgan College as well as by the Chairman and Labor Secretary of the Communist Party. The Court declined jurisdiction on technical grounds. The Chief Justice in a concurring opinion referred to the status of the teacher and said with regard to her obligation to make the loyalty statement (71 Atl. [2d] 485):

> "We think she, and other people similary situated, can be lawfully required to make such a statement. It is an arrogant assumption that a government cannot protect itself against the infiltration of those who desire to destroy it by force. * * * No one has a right to be a public employee. *McAuliffe* v. *Mayor*, 155 Mass. 516, 29 N. E. 517 (Justice Holmes). No fundamental rights are destroyed by not employing or by not keeping in public employment those who cannot or will not satisfy the appointing authority that they are not subversive persons."

The above ruling was approved by the Court in *Shub* v. *Simpson* (Md., 1950), 76 Atl. (2d) 332, where in sustaining a statute requiring a loyalty oath of political candidates, the Court said (76 Atl. [2d] 339-340):

> "Appellants also attack Chapter 86 as a whole on various grounds, all of which were discussed in appellee's brief filed in the *Hammond* v. *Lancaster*

case, *supra*, to which reference is made by appellants here. These grounds are that it abridges the fundamental rights of freedom of speech, press and assembly, that it is vague and indefinite and therefore violates due process, that it is a bill of attainder, that it attempts to establish guilt by association, and other similar contentions. It is contended that the act is basically inseparable in its provisions, and, therefore, it should be stricken down in its entirety.

"If we assume that these appellants have any standing in this case to make these contentions (which we do not decide) we think they have been recently fully discussed and disposed of in three recent decisions by the Courts of the United States. These are *Dunne* v. *United States*, 8 Cir., 138 F. 2d 137 and *United States* v. *Dennis* 2 Cir., 183 F. 2d 201 passing upon the Smith Act, 18 U. S. C. A. sec. 2385, and *American Communications Association* v. *Douds*, *supra*, 339 U. S. 382, 70 S. Ct. 674, 94 L. Ed.—which approved the oath required by the Taft-Hartley Act, 29 U. S. C. A. sec. 141 *et seq.* We do not think it necessary to repeat what has been said in these cases. We are unable to find that the statute before us, on its face, violates any of the fundamental rights of appellants, or that it is susceptible of an interpretation which makes it necessary for the courts to strike it down. On the contrary, there is a presumption in favor of its validity, and there has been presented to us no argument which impairs or rebuts that presumption."

The case of *Thorp* v. *Board of Trustees* (N. Y., 1951), 79 Atl. (2d) 462, upheld a statute requiring faculty members in all state supported schools, colleges and universities to subscribe to an "oath of allegiance and office," which covers the subject matter of the present loyalty statement and more. The plaintiff, a member of a college

faculty, claimed that the statute was contrary to a provision of the New Jersey Constitution quoted and relied on by petitioners. The Supreme Court of New Jersey overruled this contention, and did so on grounds very similar to those urged by us here. The Court in part said:

> "First, it is contended that the oath of allegiance thus directed qualifies the oath prescribed for State officers by Article VII, Section I, paragraph 1 of the Constitution of 1947, and the act is therefore, in this respect at least, unenforceable as a legislative interference with an exclusive constitutional prescription and an enlargement of constitutional qualifications within the principle of *Imbrie* v. *Marsh*, 3 N. J. 578 (1950). We think not.
>
> "Teaching is a profession; and in New Jersey the practioners of the profession in the public school system are not deemed public officers. At the outset, the relationship between the public school teacher and the school authority is contractual in nature. The attainment of the tenure provided by R. S. 18:13-16 and R. S. 18:13-17 does not convert the teacher's employment into a public office. Tenure as therein ordained is a mere 'legislative status' subject to legislative alteration and annulment (citing many cases). Teaching in the public schools does not involve the exercise of governmental powers, either of the State or the school district, and so the teacher is not an officer either of the State or the local corporate body."

In *Steiner* v. *Darby* (1948), 88 Calif. App. (2d) 481, which involved a loyalty statement required of county employees, the Court said (88 Calif. App. [2d] 491):

> *"There is nothing in the foregoing rule or affidavit which in the slightest degree affects the plaintiffs' rights of political belief or religious belief.* Defendants

are simply performing their duty by making proper inquiry of their employees as to their loyalty to their employer, the people of the State of California."

On March 21, 1947, the President issued Executive Order No. 9835 (5 USCA 631, n.) establishing a loyalty program among employees of the Executive Department and setting up a Loyalty Review Board to administer it. Among the activities listed by the Executive Order as justifying dismissal (Part V, Sec. 2, f) is membership in any organization designated by the Attorney General as "Communist." In *Washington v. Clark* (D. C., 1949), 84 Fed. Supp. 964, the Court, denying an injunction sought by post office employees to prevent enforcement of the order, said (p. 966):

> "The Government has a perfect right to pick and choose its own employees, and it would have a perfect right, if it saw fit to do so, to get rid of them for making utterances, which they have a right to make under the Constitution. The Government may not imprison a person for making various utterances, but it may, if it sees fit to do so, dismiss a Government employee who makes such utterances. As was said many years ago by MR. JUSTICE HOLMES, a great champion of personal rights, In *McAuliffe v. The Mayor and Alderman of New Bedford*, 155 Mass. 216, 29 N. E. 517, where a policeman who had been discharged from the service for improper utterances sought reinstatement:
>
> " 'The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman'."

A similar case is *Friedman v. Schwellenbach* (App. D. C., 1946), 159 Fed. (2d) 22, 24.

We submit that the authorities are unamimous to the point that a non-Communist statement can lawfully be required as a condition of either public or private employment.

Additional authorities include the very recent case of *Loew's Incorporated* v. *Cole* (1950), Ninth Circuit, 185 Fed. (2d) 641. Cole was under contract as a motion picture writer. He refused to answer questions asked by a Congressional Committee, including the question whether he was a member of the Communist Party. The Court of Appeals held that this justified the employer in terminating Cole's contract for cause.

There is language strongly against petitioners' contentions in *Lawson* v. *United States* (App. D. C., 1949), 176 Fed. (2d) 49, and *Barsky* v. *United States* (App. D. C., 1948), 167 Fed. (2d) 241, *certiorari* denied, 334 U. S. 843, upholding power of Congressional committees to require answers to questions as to whether the persons concerned were Communists.

In the case of *L'Hommedieu* v. *Board of Regents of University of State of New York* (1950), 276 App. Div. 494, 95 N. Y. S. (2d) 443, upholding a statute providing for dismissal of members of subversive organizations from the school system and requiring loyalty affirmations as part of implementation of the statutory policy, the Court said:

> "When it comes to loyalty to our government, *the affirmation of loyalty*, the denial of disloyalty, renunciation of membership in organizations advocating overthrow of our government or subscribing to subversive tenets, all have been upheld as qualifications

of public employment or of holding office in organizations availing themselves of statutory privileges (Citing cases) (Pages 452-453, 95 N. Y. S. [2d]). * * *"

In the case of *Garner* v. *Board of Public Works*, 98 A. C. A. 694, at page 699, it is said:

"It is, therefore, the duty of those charged with the management of the business of government to ascertain, require, and insure unconditional, unswerving loyalty of every servant of the people, high or low.

"One of the foundation stones of private business is that the employee must be loyal to his employer. Loyalty is implicit in the contract of hiring. No private business can long succeed without the conscientious, undivided support of its employees. The man or woman who denies allegiance to his employment is, and should be, soon separated from it. Nemesis with a club waits for him around the corner. *And so long as the employment continues, every employer has the right at any time to ask his employee to declare his loyalty.*"

The Court also said concerning the position of the petitioners (p. 699):

"'But,' say some of the petitioners, 'we-re loyal. We will take the oath to defend and support the Constitution of the United States and of the State of California. What we object to is that we are required, under oath, to express our beliefs; it inquires into our thinking today, our thinking tomorrow'."

In response, however, the Court said (p. 700):

"That question is not present in this case. The ordinance under consideration does not call for beliefs. It provides that one must aver whether or not he is or ever was a member of the Communist party or the

Communist Political Association; that he has not within five years advocated the overthrow of the government by force, violence, or unlawful means; that he is not and has not been a member of any group, society, association, organization, or party which advises or teaches overthrow of the government by such means; and that while he is in the service of the city he will not belong to or become a member of any such group, or advocate or teach such subversive doctrines.

"The right of the people of the State of California to have their employees *declare* their allegiance to the state, that they are not its enemies, and do not advocate or believe in destroying the state by force, violence or unlawful means, is not trammeled, infringed, or denied by any constitutional provision, by natural justice, or by common sense. The ordinance before this court, adopted by a subdivision of state government, is well within the legislative power, and a timely and proper exercise thereof."

THE CASE OF GIROUARD V. UNITED STATES (1946), 328 U. S. 61, 90 L. Ed. 1084, HAS NO APPLICATION IN THE CASE AT BAR

In 1943, petitioner, a native of Canada, filed his petition for naturalization in the District Court of Massachusetts. He stated in his application that he understood the principles of the Government of the United States, believed in its form of government, and was willing to take the oath of allegiance (Oct. 14, 1940) 54 Stat. c. 876, 8 USCA 735(b), 2 F. C. A., Title 8, Sec. 735(b), but was not willing to respond in the affirmative to a question in the application "if necessary, are you willing to take up arms in defense

of this country?" he replied "No (non-combatant) Seventh Day Adventist."

MR. JUSTICE DOUGLAS said in the opinion:

"* * * the oath required of aliens does not in terms require that they promise to bear arms. *Nor has Congress expressly made any such finding a prerequisite to citizenship.* To hold that it is required is to read into the Act by implication. But we do not assume that Congress intended to make such an abrupt and radical departure from our traditions unless it spoke in unequivocal terms.

"* * * There is not the slightest suggestion that Congress set a stricter standard for aliens seeking admission to citizenship than it did for officials who make and enforce the laws of the nation and administer its affairs. It is hard to believe that one need forsake his religious scruples to become a citizen but not to sit in the high councils of State."

MR. JUSTICE STONE, in dissenting, said:

"No question of the constitutional power of Congress to withhold citizenship on these grounds is involved. *That power was not doubted.* See *Selective Draft Law* Cases. *Arver* v. *United States,* 245 U. S. 366, 62 L. Ed. 352, 38 S. Ct. 159, L. R. A. 1918c 361, Anno. Cases 1918 B 856; *Hamilton* v. *Regents of the University of California,* 293 U. S. 245, 79 L. Ed. 343, 55 S. Ct. 197."

The case of *Hamilton* v. *Regents of the University of California,* 293 U. S. 245, 79 L. Ed. 343, 55 Sup. Ct. 197, was a suit against the Regents to admit students to the university who refused to take a course in military science and tactics. The minors are members of the Methodist Episcopal Church and for many years their fathers have

been ordained ministers. The University of California is a land grant college and under the Morrill Act approved July 2, 1862, 12 Statutes at Large 503, 7 USCA, Sec. 301-8, the university was given certain benefits if it complied with the terms of the Act. Among other provisions the university was to teach a course in military tactics. The Regents require enrollment and participation of able-bodied male students who are citizens of the United States. The State Court denied the petition for a writ of mandate.

"The enforcement of an order of the board of regents of a state university prescribing instruction in military science and tactics as a required course does not unconstitutionally abridge the privileges or immunities of citizens of the United States or deprive any person of liberty without due process of law in violation of the Fourteenth Amendment to the Federal Constitution.

"Every citizen owes the duty, according to his capacity, to support and defend the government. Federal and state, against all enemies."

MR. JUSTICE BUTLER:

"Government, federal and state, each in its own sphere owes a duty to the people within its jurisdiction to preserve itself in adequate strength to maintain peace and order and to assure the just enforcement of law. And every citizen owes the reciprocal duty, according to his capacity, to support and defend government against all enemies. Selective Draft Law Cases (*Arver* v. *United States*) *supra*, 245 U. S. p. 378, 62 L. Ed. 353, 38 S. Ct. 159, L. R. A. 1918c, 361, Ann. Cas. 1918B, 856; *Minor* v. *Happersett*, 21 Wall. 162, 166, 22 L. ed. 627.

"The conscientious objector is relieved from the obligation to bear arms in obedience to no constitutional provision, express or implied; but because, and only because, it has accorded with the policy of Congress thus to relieve him. * * * The privilege of the native-born conscientious objector to avoid bearing arms comes not from the Constitution but from the acts of Congress. That body may grant or withhold the exemption as in its wisdom it sees fit; and if it be withheld, the native-born conscientious objector cannot successfully assert the privilege. No other conclusion is compatible with the well-nigh limitless extent of the war powers as above illustrated, which include, by necessary implication, the power, in the last extremity, to compel the armed service of any citizen in the land, without regard to his objections or his views in respect of the justice or morality of the particular war or of war in general."

MR. JUSTICE CARDOZO (concurring):

"Concurring in the opinion I wish to say an extra word.

"I assume for present purposes that the religious liberty protected by the First Amendment against invasion by the nation is protected by the Fourteenth Amendment against invasion by the states.

"Accepting that premise, I cannot find in the respondents' ordinance an obstruction by the state to 'the free exercise' of religion as the phrase was understood by the founders of the nation, and by the generations that have followed. *Davis* v. *Beason*, 133 U. S. 333, 342, 33 L. ed. 637, 10 S. Ct. 299.

"There is no occasion at this time to mark the limits of governmental power in the exaction of military service when the nation is at peace. The petitioners have not been required to bear arms for any hostile

purpose, offensive or defensive, either now or in the future. They have not even been required in any absolute or peremptory way to join in courses of instruction that will fit them to bear arms. If they elect to resort to an institution for higher education maintained with the state's moneys, then and only then they are commanded to follow courses of instruction believed by the state to be vital to its welfare. This may be condemned by some as unwise or illiberal or unfair when there is violence to conscientious scruples, either religious or merely ethical. More must be shown to set the ordinance at naught. In controversies of this order courts do not concern themselves with matters of legislative policy, unrelated to privileges or liberties secured by the organic law. The First Amendment, if it be read into the Fourteenth, makes invalid any state law 'respecting an establishment of religion or prohibiting the free exercise thereof.' Instruction in military science is not instruction in the practice or tenets of a religion. Neither directly nor indirectly is government establishing a state religion when it insists upon such training. Instruction in military science, unaccompanied here by any pledge of military service, is not an interference by the state with the free exercise of religion when the liberties of the constitution are read in the light of a century and a half of history during days of peace and war.

"The meaning of those liberties has striking illustration in statutes that were enacted in colonial times and later. They will be found collected in the opinion of the lower court in *Macintosh* v. *United States* (C. C. A. 2d) 42 F. (2d) 845, 847, 848, 283 U. S. 605, 632, 75 L. Ed. 1302, 1314, 51 S. Ct. 570, and more fully in the briefs of counsel. From the beginnings of our history Quakers and other conscientious objectors have been exempted as an act of grace from military service, but the exemption, when granted, has been coupled with a con-

dition, at least in many instances, that they supply the army with a substitute or with the money necessary to hire one * * * (Citing cases). For one opposed to force, the affront to conscience must be greater in furnishing men and money wherewith to wage a pending contest than in studying military science without the duty or the pledge of service. Never in our history has the notion been accepted, or even, it is believed, advanced, that acts thus indirectly related to service in the camp or field are so tied to the practice of religion as to be exempt, in law or in morals, from regulation by the state. On the contrary, the very lawmakers who were willing to give release from warlike acts had no thought that they were doing anything inconsistent with the moral claims of an objector, still less with his constitutional immunities, in coupling the exemption with these collateral conditions.

"Manifestly a different doctrine would carry us to lengths that have never yet been dreamed of. *The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government.* One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law.

"I am authorized to state that MR. JUSTICE BRANDEIS and MR. JUSTICE STONE join in this opinion."

In the case of *Ray H. Garner et al., Petitioners* v. *Board of Public Works of the City of Los Angeles et al.*,

decided June 4, 1951, by the Supreme Court of the United States, reported in 71 Sup. Ct. 909, the Court said:

"MR. JUSTICE CLARK delivered the opinion of the Court.

"In 1941 the California Legislature amended the Charter of the City of Los Angeles to provide in part as follows:

"'* * * no person shall hold or retain or be eligible for any public office or employment in the service of the City of Los Angeles, in any office or department thereof, either elective or appointive, who has within five (5) years prior to the effective date of this section advised, advocated or taught, or who may, after this section becomes effective (April 28, 1941), advise, advocate or teach, or who is now or has been within five (5) years prior to the effective date of this section, or who may, after this section becomes effective, become a member of or affiliated with any group, society, association, organization or party which advises, advocates or teaches, or has, within said period of five (5) years, advised, advocated or taught the overthrow by force or violence of the government of the United States of America or of the State of California.

"'In so far as this section may be held by any court of competent jurisdiction not to be self-executing, the City Council is hereby given power and authority to adopt appropriate legislation for the purpose of effectuating the objects hereof.' Calif. Stat., 1941, c. 67.

"Pursuant to the authority thus conferred the City of Los Angeles in 1948 passed ordinance No. 94,004 requiring every person who held an office or position in the service of the city to take an oath prior to January 6, 1949. In relevant part the oath was as follows:

'I further swear (or affirm) that I do not advise, advocate or teach, and have not within the period

beginning five (5) years prior to the effective date of the ordinance requiring the making of this oath or affirmation, advised, advocated or taught, the overthrow by force, violence or other unlawful means, of the Government of the United States of America or of the State of California and that I am not now and have not, within said period, been or become a member of or affiliated with any group, society, association, organization or party which advises, advocates or teaches, or has, within said period, advised, advocated or taught, the overthrow by force, violence or other unlawful means of the Government of the United States, or of the State of California. I further swear (or affirm) that I will not, while I am in the service of the City of Los Angeles, advise, advocate or teach, or be or become a member of or affiliated with any group, association, society, organization or party which advises, advocates or teaches, or has within said period, advised, advocated or taught, the overthrow by force, violence or other unlawful means, of the Government of the United States of America or of the State of California * * *'.

The ordinance also required every employee to execute an affidavit 'stating whether or not he is or ever was a member of the Communist Party of the United States of America or of the Communist Political Association, and if he is or was such a member, stating the dates when he became, and the periods during which he was, such a member * * *'

"On the final date for filing of the oath and affidavit petitioners were civil service employees of the City of Los Angeles. Petitioners Pacifico and Schwartz took the oath but refused to execute the affidavit. The remaining fifteen petitioners refused to do both. All were discharged for such cause, after administrative hearing, as of January 6, 1949. In this action they sue for

reinstatement and unpaid salaries. The District Court of Appeal denied relief. 98 Cal. App. 2d 493 (1950). We granted *certiorari*, 340 U. S. 941 (1951).

"Petitioners attack the ordinance as violative of the provision of Art. I, § 10 of the Federal Constitution that "No State shall * * * pass any Bill of Attainder, (or) *ex post facto* Law * * *" They also contend that the ordinance deprives them of freedom of speech and assembly and of the right to petition for redress of grievances.

"Petitioners have assumed that the oath and affidavit provisions of the ordinance present similar constitutional considerations and stand or fall together. We think, however, that separate disposition is indicated.

"2. The affidavit raises the issue whether the City of Los Angeles is constitutionally forbidden to require that its employees disclose their past or present membership in the Communist Party or the Communist Political Association. Not before us is the question whether the city may determine that an employee's disclosure of such political affiliation justifies his discharge.

"We think that a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to their fitness and suitability for the public service. *Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust. Both are commonly inquired into in determining fitness for both high and low positions in private industry and are not less relevant in public employment. The affidavit requirement is valid.*

"2. In our view the validity of the oath turns upon the nature of the Charter amendment (1941) and the

relation of the ordinance (1948) to this amendment. Immaterial here is any opinion we might have as to the Charter provision insofar as it purported to apply retrospectively for a five-year period prior to its effective date. We assume that under the Federal Constitution the Charter amendment is valid to the extent that it bars from the city's public service persons who, subsequent to its adoption in 1941, advise, advocate, or teach the violent overthrow of the Government or who are or become affiliated with any group doing so. The provisions operating thus prospectively were a reasonable regulation to protect the municipal service by establishing an employment qualification of loyaty to the State and the United States. Cf. *Gerende* v. *Board of Supervisors of Elections*, 341 U. S. 56 (1951). Likewise, as a regulation of political activity of municipal employees, the amendment was reasonably designed to protect the integrity and competency of the service. This Court has held that Congress may reasonably restrict the political activity of federal civil service employees for such a purpose, *United Public workers* v. *Mitchell*, 330 U. S. 75, 102-103 (1947), and a State is not without power to do as much.

"The Charter amendment defined standards of eligibility for employees and specifically denied city employment to those persons who thereafter should not comply with these standards. While the amendment deprived no one of employment with or without trial, yet from its effective date it terminated any privilege to work for the city in the case of persons who thereafter engaged in the activity proscribed.

"The ordinance provided for administrative implementation of the provisions of the Charter amendment. The oath imposed by the ordinance proscribed to employees activity which had been denied them in identical terms and with identical sanctions in the

Charter provision effective in 1941. The five-year period provided by the oath extended back only to 1943.

"The ordinance would be *ex poste facto* if it imposed punishment for past conduct lawful at the time it was engaged in. Passing for the moment the question whether separation of petitioners from their employment must be considered as punishment, the ordinance clearly is not *ex post facto*. The activity covered by the oath had been proscribed by the Charter in the same terms, for the same purpose, and to the same effect over seven years before, and two years prior to the period embraced in the oath. Not the law but the fact was posterior.

"Bills of attainder are 'legislative acts * * * that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial * * *' *United States* v. *Lovett*, 328 U. S. 303, 315 (1946). Punishment is a prerequisite. See concurring opinion in *Lovett* v. *United States*, *supra*, at 318, 324. Whether legislative action curtailing a privilege previously enjoyed amounts to punishment depends upon 'the circumstances attending and the causes of the deprivation,' *Cummings* v. *Missouri*, 4 Wall. 277, 320 (1867). We are unable to conclude that punishment is imposed by a general regulation which merely provides standards of qualification and eligibility for employment.

"*Cummings* v. *Missouri*, 4 Wall. 277 (1867), and *Ex parte Garland*, 4 Wall. 333 (1867), the leading cases in this Court applying the federal constitutional prohibitions against bills of attainder, recognized that the guarantees against such legislation have never been intended to preclude legislative definition of standards of qualification for public or professional employment.

Carefully distinguishing an instance of legislative 'infliction of punishment' from the exercise of 'the power of Congress to prescribe qualifications,' the Court said in *Garland's* case: 'The legislature may undoubtedly prescribe qualifications for the office, to which he must conform, as it may, where it has exclusive jurisdiction, prescribe qualifications for the pursuit of any of the ordinary avocations of life.' 4 Wall. at 379-380. See also, *Cummings* v. *Missouri, supra,* at 318-319. This doctrine was reaffirmed in *Dent* v. *West Virginia,* 129 U. S. 114 (1889), in which Mr. Justice Field, who had written the *Cummings* and *Garland* opinions, wrote for a unanimous Court upholding a statute elevating standards of qualification to practice medicine. And in *Hawker* v. *New York,* 170 U. S. 189 (1898), the Court upheld a statute forbidding the practice of medicine by any person who had been convicted of a felony. Both *Dent* and *Hawker* distinguished the *Cummings* and *Garland* cases as inapplicable when the legislature establishes reasonable qualifications for a vocational pursuit with the necessary effect of disqualifying some persons presently engaged in it.

"Petitioners rely heavily upon *Lovett* v. *United States,* 328 U. S. 303 (1946), in which a legislative act effectively separating certain public servants from their positions was held to be a bill of attainder. Unlike the provisions of the Charter and ordinance under which petitioners were removed, the statute in the *Lovitt* case did not declare general and prospectively operative standards of qualification and eligibility for public employment. Rather, by its terms it prohibited any further payment of compensation to named individual employees. Under these circumstances, viewed against the legislative background the statute was held to have imposed penalties without judicial trial.

"Nor are we impressed by the contention that the oath denies due process because its negation is not limited to affiliations with organizations known to the employee to be in the proscribed class. We have no reason to suppose that the oath is or will be construed by the City of Los Angeles or by California courts as affecting adversely those persons who during their affiliation with a proscribed organization were innocent of its purpose, or those who severed their relations with any such organization when its character became apparent, or those who were affiliated with organizations which at one time or another during the period covered by the ordinance were engaged in proscribed activity but not at the time of affiants affiliation.* We assume that scienter is implicit in each clause of the oath. As the city has done nothing to negative this interpretation, we take for granted that the ordinance will be so read to avoid raising difficult constitutional problems which any other application would present. *Fox* v. *Washington*, 236 U. S. 273, 277 (1915). It appears from correspondence of record between the city and petitioners that although the city welcomed inquiry as to its construction of the oath, the interpretation upon which we have proceeded may not have been explicitly called to the attention of petitioners before their refusal. We assume that if our interpretation of the oath is correct the City of Los Angeles will given those petitioners who heretofore refused to take

*In interpreting local legislation proscribing affiliation with defective organizations the Supreme Court of California has gone beyond the literal text of a statute so as to require knowledge of the character of the organization, as of the time of affiliation, by the person whose affiliation is in question. In **People v. Steelik**, 187 Cal. 361, 203 P. 78 (1921), the Court upheld a conviction under the Criminal Syndicalism Act of 1919 which made one guilty of a felony who "is" a member of any one of a certain class of proscribed organizations. The indictment in relevant part alleged that defendants "are and each of them is" a member of a proscribed organization. The court interpreted the statute as defining and the indictment as charging "the offense of criminal syndicalism, in that he **knowingly** belonged" to a proscribed organization. (Emphasis added).

the oath an opportunity to take it as interpreted and resume their employment.

"The judgment as to Pacifico and Schwartz is affirmed. The judgment as to the remaining petitioners is affirmed on the basis of the interpretation of the ordinance which we have felt justified in assuming (Italics supplied).

"Affirmed."

Proposition III.

Acceptance in the form prescribed shall be obligatory.

Section 2, Enrolled House Bill No. 8 begins: "The oath or affirmation required by this act shall be the following:". Then follows the oath in detail that each public officer or employee must take. The law does not provide that the attorney general may rewrite the oath or affirmation, or that the Supreme Court may rewrite it. The oath stands as it is written and must be subscribed to as written. Neither can it be interpreted to mean other than what it says. The words must be given the usual meaning as defined by any standard dictionary.

Unless the oath or affirmation is subscribed as written the law has not been complied with.

Section 5 of the Act provides:

"No compensation nor reimbursement for expenses shall be paid to any public officer or employee by any public agency unless such officer or employee has taken and subscribed to the oath or affirmation *required by this act*. It shall be the duty of the person certifying to public payrolls to ascertain and certify

that every officer or employee thereon has taken such oath or affirmation."

We cannot conclude that the Legislature intended that any officer or employee of the State can draw compensation or be reimbursed for expenses until such officer or employee has taken and subscribed to *the oath required by this Act.*

Defendants may point out in their brief that a New Jersey case holds that *public officers* cannot be required to take any oath except the one provided in the State Constitution. This was the ruling in *Imbrie* v. *Marsh* (N. J.), 71 Atl. (2d) 352, but such ruling does not apply in this suit because the same court has recently upheld an oath applicable to public school teachers in *Thorp* v. *Board of Trustees,* 79 Atl. (2d) 462, on the ground that a teacher is an employee and not a *public officer.*

Proposition IV.

A teacher is an employee and not a public officer.

In *Hartigan* v. *Board of Regents of West Virginia University* (1901), 49 W. Va. 14, 38 S. E. 698, the Court cited a case in which it had decided "that a teacher is not a public officer" (p. 701), and also said (p. 701):

"But, to return to the line of thought stated above a professor in the university wields no particle of sovereign governmental authority. In a legal view he simply makes a contract with the corporation to teach in the university. In a legal view, what is the difference between a teacher in a public school and a professor in the university? None, except in grade or

eminence of station. Both are teachers in the public educational system."

The cases are summarized in 75 A. L. R. 1352, where the annotator says:

> "The courts are almost unanimous in holding that the position of a teacher is that of employee, resting on the contract of employment, and not that of public officer."

In respect to whether they exercise a part of sovereign power, there is obviously no difference between members of the University faculty and members of the faculties of state colleges or teachers in public schools.

In *Talbott* v. *Public Service Commission* (1942), 291 Ky. 109, 163 S. W. (2d) 33, the Court held that the President and faculty of the University of Kentucky were subject to a five thousand dollar annual salary limitation under a section of the State Constitution, which provided that no "public officer" except the Governor should be paid more than that sum (163 S. W. [2d] 34). This situation was relieved in *Pardue* v. *Miller* (1947), 306 Ky. 910, 206 S. W. (2d) 75, 76, where the Court overruled the prior case on the ground that the faculty members were not public officers but employees.

Proposition V.

Foreign teachers or other nationalists must take the oath as written by the Legislature.

"Nationality" is a term denoting a relationship between an individual and a nation involving the duty of

obedience (or "allegiance") on the part of the subject and protection on the part of the state.

Hackworth International Law Digest, Vol. III, page 553, says:

> "Article II of the inter-American Convention on the status of aliens, signed Feb. 20, 1928, provides:
>
> "'Foreigners are subject as are Nationals to local jurisdiction and laws, due consideration being given to the limitations expressed in conventions and treaties.' 46 Stat. 2754; 4 Treaties (Trenwith 1938) 4723.
>
> "The treaties concluded by the United States with foreign countries assuring certain rights to the Nationals of the contracting parties generally provide that the enjoyment of these rights is subject to their 'submitting themselves to all local laws and regulations duly established'."

In the case of *Home Insurance Company* v. *Dick et al.*, 281 U. S. 397, it is said:

> "* * * The claims here asserted are not based upon the full faith and credit clause * * * They rest upon the Fourteenth Amendment. Its protection extends to aliens."

Title 8, USCA, Sec. 41; provides:

> "All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to *the full and equal benefit of all laws* and proceedings for the *security of persons and property* as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and *exactions of every kind*, and to no other."

The case of *United States ex rel. John Turner, Appt.* v. *Williams*, 194 U. S. 279, 48 L. Ed. 979, was a suit for habeas corpus. Relator, an alien, was arrested in New York City by immigration officers, found to be an anarchist, and in the United States in violation of law, and was ordered deported to the country from whence he came. Certain papers were found on Turner, one of them being a list of his proposed series of lectures, the subjects including: "The Legal Murders of 1887", and "The Essentials of Anarchism."

MR. CHIEF JUSTICE FULLER, at page 290, said:

"It is contended that the Act of March 3, 1903, is unconstitutional because in contravention of the 1st, 5th, and 6th Articles of Amendment of the Constitution, and of Sec. 1 of article 3 of that instrument; and because no power is delegated by the Constitution to the general government over alien friends with reference to their admission into the United States or otherwise, or over the beliefs of citizens, denizens, sojourners, or aliens, or over the freedom of speech or of the press.

"Repeated decisions of this court have determined that Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in; to establish regulations for sending out of the country such aliens as have entered in violation of law, and to commit the enforcement of such conditions and regulations to executive officers; that the deportation of an alien who is found to be here in violation of law is not a deprivation of liberty without due process of law, and that the provisions of the Constitution securing the right of trial by jury have no application" (Citing cases).

At page 294:

"If the word 'anarchists' should be interpreted as including aliens whose *anarchistic views are proposed*

as those of political philosophers, innocent of evil intent, it would follow that Congress was of opinion that the tendency of the general exploitation of such views is so dangerous to the public weal that aliens who hold and advocate them would be undesirable additions to our population, whether permanently or temporarily, whether many or few; and, in the light of previous decisions, the Act, even in this aspect, would not be unconstitutional, as applicable to any alien who is opposed to all organized government.

"We are not to be understood as deprecating the vital importance of freedom of speech and of the press, or as suggesting limitations on the spirit of liberty, in itself unconquerable, but this case does not involve those considerations. The flaming brand which guards the realm where no human government is needed still bars the entrance; *and as long as human government endures they cannot be denied the power of self-preservation,* as that question is presented here."

See:

—*William Truax, Sr.* v. *Raich,* 239 U. S. 33.

Since all persons within the United States shall have the same right in every state and territory and are entitled to full and equal benefit of all laws and proceedings, non-citizens of the United States should subscribe to the oath as required by this Act in order to be compensated after May 9, 1951.

In relation to the Attorney General's brief, paragraph 4, page 4 of his opinion is set forth here in detail:

"4. In relation to that part of the oath which requires a public officer or employee to state

> 'that I will support and defend the Constitution of the United States and the Constitution of the State of Oklahoma against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of Oklahoma; * * * that I will take up arms in the defense of the United States in time of War or National Emergency, if necessary.'
>
> the Attorney General is of the opinion that since no exception was made in the act as to a *public employee* (public officers must be citizens) who is not an American citizen, but who is lawfully in the United States, said employee is required by the act to take the oath as prescribed therein. However, we do not believe it would be improper for him to, in substance, state in writing on the sheet containing his oath, at the bottom thereof,
>
> "'I am not a citizen of the United States'."

We agree that every public employee must subscribe to the oath as required by law, but desire to set forth our reasons herein.

In Hackworth Digest of International Law, Vol. III, paragraph 282, page 601, it is said:

> "It is a universally accepted rule of international law that a person voluntarily entering the military services of a foreign government owes that government temporary allegiance and must look to it for protection. In thus accepting service in the armed forces of a foreign state, he cannot look for protection to his own government against the legitimate consequences of his conduct. Assistant Secretary Messersmith to Phil Bard, October 28, 1937, MS Department of State, file 852.2221 Freed Edwards 15."

Again at pages 611-612 of Hackworth, Vol. III:

"On August 1st, 1917 the Senate of the United States passed a resolution requesting the President to propose to all European nations engaged in the war against the Central Powers of Europe an agreement, 'authorizing and empowering the United States to apply the provisions of the Act entitled "An Act to authorize the President to increase temporarily the military establishment of the United States," approved May 18, 1917, to all such subjects and citizens domiciled in this country in the same manner and to the same effect as such provisions are applied to the citizens of the United States in selecting and raising an army or navy for service in the present war.' Cong. Rec., Vol. 55, pt. 6, p. 5667; 1918 For. Rel. Supp. 2, p. 648.

"Conventions were concluded with the following countries providing for the reciprocal military service of the citizens or subjects of the respective countries in the territory of the other, subject to certain provisions with respect to exemption; Canada, June 3, 1918, 40 Stat. 1624; 3 Treaties, etc. (Redmond, 1923) 2654; 1918 For. Rel., Supp. 2, p. 714; France, Sept 3, 1918, 40 Stat. 1629; 3 Treaties, etc. (Redmond, 1923) 2592; 1918 For. Rel., Supp. 2, p. 723, Great Britain, June 3, 1918, 40 Stat. 1620; 3 Treaties, etc. (Redmond, 1923) 2650; 1918 For. Rel., Supp. 2, p. 708; Greece, Aug. 30, 1917, 40 Stat. 1637; 3 Treaties, etc. (Redmond, 1923) 2663; 1918 For. Rel., Supp. 2, p. 729. Italy, Aug. 24, 1918, 40 Stat. 1633; 3 Treaties, etc. (Redmond, 1923) 2708; 1918 For. Rel., Supp. 2, p. 726. For correspondence relative to the negotiation of these conventions, see 1918 For. Rel., Supp. 2, pp 648-732."

The Selective Training and Service Act of Sept. 16, 1940, 54 Stat. 885, provides in Section 3:

"Except as otherwise provided in this Act, every male citizen of the United States, and every male alien residing in the United States who has declared his intention to become such a citizen, between the ages of twenty-one and thirty-six at the time fixed for his registration, shall be liable for training and service in the land and naval forces of the United States.

"For executive order 8545 of Sept. 23, 1940 prescribing Selective Service regulations under the act, see 5 F. R. 3779, 3923 (Sept. 25 and Oct. 8, 1940).

"For an interpretative ruling upon the meaning of the words 'male alien' residing in the United States under section 2 of the Selective Training and Service Act of 1940, see the opinion of the Attorney General dated Oct. 11, 1940 (39 Op. Att. Gen., No. 139).

"Section 3 of the act of 1940 was amended by an act approved Dec. 20, 1941, which makes all male persons between the ages of 20 and 45, residing in the United States liable for training and service in the land or naval forces. Nationals of neutral countries may apply prior to induction into the service for exemption as aliens, but such application has the effect of thereafter debarring the applicant from becoming a citizen of the United States. A further proviso prohibits the induction of persons declared by the President to be alien enemies, unless they are acceptable to the land or naval forces. Public 360, 77th Cong., 1st Sess. See also S. Rep. 394, 77th Cong., 1st Sess."

What do the words *"that I will take up arms in the defense of the United States in time of War, or National Emergency, if necessary"* mean? What did the Legislature have in mind when these words were written? Can the words mean other than bear arms if and when called upon to do so by the President as Commander-in-Chief, or agency

of the Government, vested with the power to call upon them to go into military service? This power is vested in the President by Congress by virture of Title 50, USCA, 310.

Title 50, USCA App., Sec. 303.

"(a) Except as otherwise provided in this Act (sections 301-303, 304, 305, 306-309, 310, 311-318 of this Appendix), every male citizen of the United States, and every other male person residing in the United States, who is between the ages of nineteen and forty-five, at the time fixed for his registration, or who attains the age of nineteen after having been required to register pursuant to section 2 of this Act (302 of this Appendix), shall be liable for training and service in the land or naval forces of the United States: Provided, That any citizen or subject of a neutral country shall be relieved from liability for training and service under this Act (section 301-303, 304, 305, 306-309, 310, 311-318 of this Appendix) if, prior to his induction into the land or naval forces, he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President, but any person who makes such application shall thereafter be debarred from becoming a citizen of the United States: Provided, further, That no citizen or subject of any country who has been or who may hereafter be proclaimed by the President to be an alien enemy of the United States shall be inducted for training and service under this Act (section 301-303, 304, 305, 306-309, 310, 311-318 of this Appendix) unless he is acceptable to the land or naval forces."

If, by reason of a treaty agreement with another country, a national of that country could not be called

upon to bear arms for the United States, then by operation of that agreement the military authorities would say it is not necessary for that national to bear arms.

For example: A woman teacher, a British subject, holds a contract to teach physics at Oklahoma A. & M. College, at Stillwater, and signs the oath as written: *"that I will take up arms in the defense of the United States in time of War, or National Emergency, if necessary."* An emergency arises and a war is declared against Russia. Congress passes a draft law and selective service starts calling men and women into service. At the time of the emergency the United States has a treaty agreement with Britain excluding her nationals from military service in American forces. Under the draft law written by the Congress, construed in conjunction with our treaty agreement, the visiting teacher would not be compelled to bear arms. Yet she has fully complied with the proviso in the oath law: *"That I will take up arms in the defense of the United States in time of War, or National Emergency, if necessary."*

It is not necessary that she bear arms because of the treaty agreement.

Now let us apply this section of the oath to a native-born citizen with religious beliefs against war. What do the words in their application to him mean?

For example: An associate chemistry professor, genius, age 22 belongs to a religious faith opposed to war. War is declared against Russia and he is drafted. When he fills out his draft questionnaire he tells of his faith and,

when drafted, is then assigned by the military authorities to non-combatant duty, or where the military authorities wish to place him.

Under those circumstances could the chemistry professor sign that part of the oath as written: *"That I will take up arms in the defense of the United States in time of War, or National Emergency, if necessary."*

Certainly, because in the final analysis Congress determines the ages and the classes called into military service and *"if it is necessary for a person to bear arms."*

All branches of our armed forces provide special duties for persons holding religious scruples against bearing arms.

As a matter of fact *any* person signing the oath *"to bear arms, if necessary"* is not affirming to do anything he will not have to do in any case if war comes. No rights are lost nor none gained insofar as bearing arms is concerned. 50 USCA 310.

Proposition VI.

The oath law does not constitute an unlawful delegation of legislative power of the State of Oklahoma to the Government of the United States and to an executive office thereof.

At page 25, brief of the Board of Regents, under their Proposition 5, the question is raised as to the interpretation of the following words:

> "Which *has been officially determined* by the United States Attorney General or other authorized agency of the United States to be a communist front or subversive orgainzation" (Italics supplied).

It simply means what it says and what the lower court found it to mean. Any organization that prior to the passage of the law by the Legislature, to-wit: April 9, 1951, *"which has been officially determined* * * * a communist front or subversive organization." Certainly the Legislature did not intend to say and did not say "any organization determined after the passage of this Act to be subversive by the Attorney General of the United States." To give it the simple meaning of what the words mean makes the proviso constitutional in all things as pointed out in Board of Regents brief, page 28, which is supported by the general rule which appears in 16 C. J. S. (1939), page 343, Section 133b, because here the Legislature did not delegate future authority to the Attorney General of the United States or other authorized agency. The statute is valid because it adopts existing lists of the Attorney General or other authorized agencies by reference by using the words, *"which has been officially determined"* prior to April 9th, the effective date of the Act. There is a well known principal of law that needs no citations of authority. Even if the interpretation could be given the Act as contended by the Board, which we specifically and categorically deny, or could be given an interpretation which would make the Act invalid or give it a meaning to make it valid, the Court would give it the interpretation that would validate it.

It is difficult to conceive of language more plainly indicating the intention of the Legislature.

In the case of *Nervo* v. *Mealey*, 25 N. Y. S. (2d) 632, 175 Misc. 952, in construing the words "has been", the Court held:

> "The use of the words 'has been' or some other expression denoting past time in a statute, is construed as retrospective when constitutional difficulties do not forbid."

There is no uncertainty as to the meaning of the Legislature and the fact that when the Legislature meets again it will again have to re-enact the loyalty oath in order to have included the organizations determined to be subversive between April 9, 1951 and April 9, 1953 (or any other date of the passage of a new oath law) and must be subsequently enacted at each session of the Legislature in order to include new lists determined in the meantime is a matter for the Legislature. We have no doubt that each succeeding Legislature will be vitally concerned with keeping subversive persons from the State pay rolls and will promptly enact such measure.

In the case of *Joint Anti-Fascist Refugee Committee, Petitioner,* v. *J. Howard McGrath, Attorney General of the United States et al.* (decided by the Supreme Court of the United States April 30, 1951) in an opinion announced by MR. JUSTICE BURTON, the Court held that the Attorney General must give a hearing to an organization before listing it as communistic. This action involved executive order No. 9835, the President's Loyalty Order.

> "Nothing we have said purports to adjudicate the truth of the petitioners' allegations that they are not in fact communistic. We have assumed that the des-

ignations made by the Attorney General are arbitrary because we are compelled to make that assumption by his motions to dismiss the complaints. Whether the complaining organizations are in fact communistic or whether the Attorney General possesses information from which he could reasonably find them to be so must await the determination by the District Court upon remand.

"For these reasons, we find it necessary to reverse the judgments of the Court of Appeals in the respective cases and to remand each case to the District Court with instructions to deny to respondents motion that the complaint be dismissed for failure to state a claim upon which relief can be granted."

They object, not to a particular erroneous action of a valid power, but to the validity of the regulation authorizing the action.

MR. JUSTICE FRANKFURTER, in his opinion, said:

"'"Fairness of procedure" is due process in the primary sense.' *Brinkerhoff Faris Co.* v. *Hill*, 281 U. S. 673, 681.

"It is ingrained in our national traditions and is designed to maintain them. In a variety of situations the Court has enforced this requirement by checking attempts of executives, legislatures, and lower courts to disregard the deep-rooted demands of fair play enshrined in the Constitution. 'This Court has never held, nor must now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without op-

portunity, at some time to be heard * * *' *The Japanese Immigrant Case*, 189 U. S. 86, 100-101.

"The high social and moral values inherent in the procedural safeguard of a fair hearing are attested by the narrowness and rarity of the instances in which we have sustained executive action even though it did not observe the customary standard of procedural fairness. It is in these instances that constitutional compulsion regarding fair procedure was directly the issue. Thus it has been held that the constitution cannot be invoked to prevent Congress from authorizing disbursements on the *ex parte* determination of an administrative officer that prescribed conditions are met. *U. S.* v. *Babcock*, 250 U. S. 328, *United States ex rel Dunlap* v. *Black*, 128 U. S. 40. The importation of goods is likewise a privilege, which is Congress clearly so directs, may likewise be conditioned on *ex parte* findings. *Butterfield* v. *Stranahan*, 192 U. S. 370, *Hilton* v. *Merritt*, 110 U. S. 97. * * * Again, when decisions of administrative officers in execution of legislation turns exclusively on considerations similar to those on which the legislative body could itself have acted summarily, notice and hearing may not be commanded by the Constitution. *Bi-metalic Co.* v. *Colorado*, 239 U. S. 441.

"* * * Nothing in the Loyalty Order requires him (attorney general) to deny organizations opportunity to present their case. The Executive Order, defining his powers, directs only that designation shall be made 'after appropriate investigation and determination.' This surely does not preclude an administrative procedure, however informal, which would incorporate the essentials of due process. Nothing has been presented to the Court to indicate that it will be impractical or prejudicial to a concrete public interest to disclose to organizations the nature of the case

against them and to permit them to meet it if they can. Indeed, such a contention could hardly be made inasmuch as the loyalty order itself requires partial disclosure and hearing in proceedings against a government employee who is a member of a proscribed organization."

MR. JUSTICE DOUGLAS reaffirms the rule of law stated throughout this brief:

"Of course, no one has a constitutional right to a government job."

In keeping with the ruling in *Joint Anti-Fascist Refugee Committee* v. *McGrath, supra,* the words "*which has been officially determined*" mean those organizations determined to be subversive after being given a hearing by the Attorney General of the United States or other authorized agency.

Proposition VII.

Requiring one to swear that he has not belonged to the named organizations for the preceding five years is not *ex post facto.*

This law cannot be *ex post facto* unless it imposes *punishment* for past conduct at the time it was engaged in. *Garner* v. *Los Angeles, supra:*

"We are unable to conclude that punishment is imposed by a general regulation which merely provides standards of qualification and eligibility for employment."

Since the statute under attack *does not* impose punishment, but merely sets forth the standards of qualification

and requirements of eligibility to hold public office or a position of public trust or to draw public funds, it cannot possibly be an *ex post facto* law, even though past conduct may be the standard of qualification for public office.

The Court further said:

> "We think that a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to their fitness and suitability for public service. Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust. Both are commonly inquired into in determining fitness for both high and low positions in private industry and are not less relevant in public employment."

The Board of Regents and Intervenors cannot successfully argue that since perjury is a crime and the intervenors are required to swear that they have not been members of a communist organization for the past five years that such proviso is *ex post facto* in that it imposes punishment for past conduct. This argument has no merit and it is apparent from the reading of the law that the punishment of imprisonment is imposed only for a present act, to-wit, swearing falsely and knowingly as regards a past fact. The act for which the punishment is imposed is unlawful when committed; thus the essential element of an *ex post facto* law is lacking.

In the case of *Skinner* v. *State ex rel. Williams*, 189 Okla. 235, 115 Pac. (2d) 123, the Court said, in an attack upon the Habitual Criminal Sterilization Act alleging the same to be cruel and unusual punishment and an *ex post*

facto law, that such act is not a bill of attainder nor an *ex post facto* law, and is not violative of Section 15, Article 2 of the Oklahoma Constitution and Section 10, Article 1 of the Federal Constitution, and further said *these constitutional inhibitions have reference only to punishment for crime* (Authorities cited). These contentions are, therefore, upon the premise that the act in question is a penal law, and that sterilization is inflicted as punishment * * *. The objections now being urged are not applicable where the operation * * * is required as a eugenic measure and not as a punishment. Since the law does not punish it is not *ex post facto*, bill of attainder or cruel or unusual punishment.

The Oklahoma Supreme Court recognizes that the element of punishment is an essential element of *ex post facto* law and bill of attainder. Here the element of punishment is lacking. There is no merit to the argument that the measure under attack is *ex post facto* or a bill of attainder.

Proposition VIII.

The Oklahoma Agricultural College is a function of the State Government and its employees are employees of the State and must take the oath.

Sec. 1. "Every officer and every employee of the State, * * * public agency, public authority * * * shall take and subscribe to the oath or affirmation required by this Act."

Sec. 3. "The oath or affirmation required by this Act shall * * * be filed by the person executing it

with the * * * Board * * * institution in or for which such person is employed or appointed."

Sec. 5. "No compensation or reimbursement for expenses incurred shall be paid to any public officer or employee of any public agency unless such officer or employee has taken and subscribed to the oath or affirmation required by this Act."

In *Connell* v. *Gray*, 33 Okla. 591, 122 Pac. 417, the Court said:

"The board of regents of the Agricultural and Mechanical colleges of this state have authority, *where not prohibited, either expressly or impliedly, by law,* to collect incidental fee to bear expenses necessary and convenient to accomplish the objects for which the institution was founded.

"Under that rule we are not required to look for grant of power * * * but for limitation of power, * * *. Our attention has been called to no legislative enactment prohibiting the Board of Regents * * * from requiring the payment of fees, other than tuition as a condition precedent to admission to the university and we know of none" (Italics supplied).

The Oklahoma Agricultural Colleges are established by the State of Oklahoma.

In the case of *Hamilton* v. *Regents of the University of California* (1934), the Supreme Court of the United States, 293 U. S. 245, declared:

"* * * by the California Constitution the regents are, with exceptions not material here, fully empowered in respect of the organization and govern-

ment of the University which, as it has been held, is a constitutional department *or function of the state government.*"

And, again at pp. 257-258:

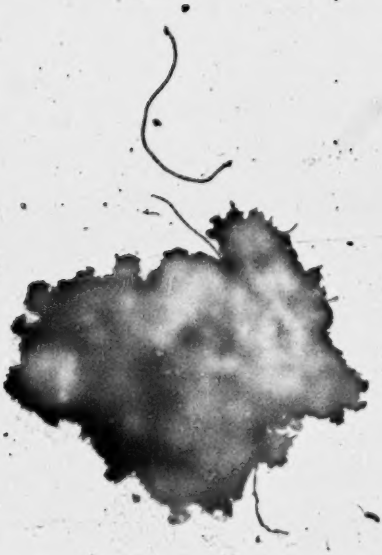
"* * * The meaning of 'statute in any state' in (Sec. 237[a] Judicial Code, 28 U. S. C. A., page 344[a]) is not limited to acts of State Legislatures. It is used to include every act legislative in character to which the state gives sanction, no distinction being made between acts of the state legislature and other exertions of the state lawmaking power."

The statute provides that every employee of the State must take the oath. This means every person in the employ of the State and paid a salary from State funds must take and subscribed to the oath. No distinction is made in the Act between an employee of a municipal subdivision, county, or school district, or other subdivision, authority, or agency, of the State. Nor can a distinction be made because the employees are under the supervision and control of a Board of Regents, an agency and authority created by the State.

Proposition IX.

The Act is constitutional under the provisions of Article 5, Section 57 of the Oklahoma Constitution.

The title is sufficient. Suffice it to say that the decided trend of the best considered cases is to so construe this provision of the Constitution as not to put unreasonable restraints upon the power of legislation and thus unnecessarily embarrass the Legislature in its work. *State*



ex rel. Reed, Insurance Commissioner v. *Midwest Mutual Burial Ass'n, Inc.*, 176 Okla. 468, 56 Pac. (2d) 124; *Cooper* v. *King*, 171 Okla. 121, 42 Pac (2d) 249; *Chicago, R. I. & P. R. Co.* v. *Excise Board of Stephens County*, 168 Okla. 519, 34 Pac. (2d) 274; *State ex rel. Ledbetter, Sheriff* v. *Pitts, County Treasurer*, 137 Okla. 59, 277 Pac. 918; *Bond et al.* v. *Phelps et al.*, 200 Okla. 70, 191 Pac. (2d) 938; *National Mutual Casualty Company et al.* v. *Briscoe*, 188 Okla. 440, 109 Pac. (2d) 1088.

Proposition X.

Intervenors willfully failed to take oath.

The trial court concluded, in Conclusion No. 6, that the intervenors, and each of them, did not take and subscribe to the oath as provided in Section 2 of the Act and willfully failed and refused to take the oath, and by reason of said willfull failure the Board of Regents was enjoined from paying them and their employment was terminated. None of the intervenors proved in the court below that they had made an honest mistake in failing to subscribe to the oath within the time prescribed in the Act. Nor did they seek permission from the trial court to be permitted to file the oath as prescribed by the statute, nor did they attempt to show an honest mistake.

We are of the opinion that by failure of the intervenors to prove, during the trial of the case below, that an honest mistake had been made that they cannot now raise the question for the first time in this appeal.

CONCLUSION

We conclude for the reasons discussed hereinbefore in our brief that the propositions raised by the Attorney General should be answered by the Court as follows:

Proposition 1. If earned prior to April 9, 1951, can be paid without taking oath.

Proposition 2. Act does not apply to persons who are employed to perform services not of continuous nature extending over a thirty-day period or more.

Proposition 3. Must subscribe to the Oath in the exact form set forth in Section 2.

Proposition 4. All citizens and non-citizens must subscribe to the oath as written.

Proposition 5. Each employee must swear that he has not been affiliated with, during the preceding five years, or a member of an organization officially determined to be a Communist Front or subversive organization.

Proposition 6. A person holding contract for a fixed period must subscribe to the Oath as written.

Proposition 7. Any public officer or employee of the State whose expenses and compensation are payable from other than State funds, or who serve without pay, must take the oath.

Proposition 8. The automatic forfeiture of office and employment provision of Section 1 are valid.

Proposition 9. Provision of the Act requiring the Oath to be taken within a thirty-day period are mandatory.

Proposition 10. A precinct election official who fails to take the oath within the thirty-day period automatically

forfeits his office and right, after expiration of said period, to be paid compensation and expenses earned and incurred by him.

Proposition 11. Act does specifically repeal existing loyalty oath law.

Proposition 12. Act does not violate Section 15, Article 2 of the State Constitution or Section 10, Article 1 of the Federal Constitution.

Provision 13. Provisions of the Act are applicable to employees of State institutions of higher education including those under control of the Board of Regents.

We join with the Attorney General in asking the Court to decide in the case before it all of the issues raised herein by all the briefs in order to avoid a multiplicity of appeals in the future. Above all we believe that it is absolutely necessary for this Court to make findings and conclusions as did the trial court and explain what the various provisions of the oath means. We agree with the findings of the trial court and believe them to be the correct interpretation of what the Legislature had in mind when this law was passed.

We conclude that Enrolled House Bill No. 8, passed by the Twenty-third Legislature, provides for the taking of an oath as a condition of employment and there is no issue involving the freedom of religion, thought or speech.

Respectfully submitted,

PAUL W. UPDEGRAFF,
Attorney for Defendant in Error.

August, 1951.

APPENDIX

APPENDIX I.

EXTRACTS FROM THE INTERNAL SECURITY ACT OF 1950*

CHAPTER 1024 — PUBLIC LAW 831
(H. R. 9490)

An Act to protect the United States against certain un-American and subversive activities by requiring registration of communist organizations, and for other purposes.

Be is enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That: This Act may be cited as the "Internal Security Act of 1950".

Title I—Subversive Activities Control

Section 1. (a) This title may be cited as the "Subversive Activities Control Act of 1950."

(b) Nothing in this Act shall be construed to authorize, require or establish military or civilian censorship or in any way to limit or infringe upon freedom of the press or of speech as guaranteed by the Constitution of the United States and no regulation shall be promulgated hereunder having that effect.

Necessity for Legislation

Sec. 2. As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress hereby finds that—

(1) There exists a world Communist movement which in its origin, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (govern-

*Reprinted U. S. Code Congressional Service, 1950, No. 10, p. 3740.

mental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout of the world through the medium of a world-wide Communist organization.

(2) The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

(3) The system of government known as a totalitarian dictatorship is characterized by the existence of a single political party, organized on a dictatorial basis, and by substantial identity between such party and its policies and the government and governmental policies of the country in which it exists.

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of a world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

(6) The Communist action organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the

objectives of the world Communist movement by bringing about the overthrow of existing governments by any available means, including force if necessary, and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship. Although such organizations usually designate themselves as political parties, they are in fact constituent elements of the world-wide Communist movement and promote the objectives of such movement by conspiratorial and coercive tactics, instead of through the democratic processes of a free elective system or through the freedom-preserving means employed by a political party which operates as an agency by which people govern themselves.

(7) In carrying on the activities referred to in paragraph (6), such Communist organizations in various countries are organized on a secret, conspiratorial basis and operate to a substantial extent through organizations, commonly known as "Communist fronts", which in most instances are created and maintained, or used, in such manner as to conceal the facts as to their true character and purposes and their membership. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such "Communist fronts."

(8) Due to the nature and scope of the world Communist movement, with the existence of affiliated constituent elements working toward common objectives in various countries of the world, travel of Communist members, representatives, and agents from country to country facilitates communication and is a prerequisite for the carrying on of activities to further the purposes of the Communist movement.

(9) In the United States those individuals who knowingly and willfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement.

(10) In pursuance of communism's stated objectives, the most powerful existing Communist dictatorship has, by the methods referred to above, already caused the establishment in numerous foreign countries of Communist totalitarian dictatorships, and threatens to establish similar dictatorships in still other countries.

(11) The agents of communism have devised clever and ruthless espionage and sabotage tactics which are carried out in many instances in form or manner successfully evasive of existing law.

(12) The Communist network in the United States is inspired and controlled in large part by foreign agents who are sent into the United States ostensibly as attachés of foreign legations, affiliates of international organizations, members of trading commissions, and in similar capacities, but who use their diplomatic or semidiplomatic status as a shield behind which to engage in activities prejudicial to the public security.

(13) There are, under our present immigration laws, numerous aliens who have been found to be deportable, many of whom are in the subversive, criminal, or immoral classes who are free to roam the country at will without supervision or control.

(14) One device for infiltration by Communists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society.

(15) The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments, the Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

* * * * * * * *

Employment of Members of Communist Organizations

Section 5(a) When a Communist orgainzation, as defined in paragraph (5) section 3 of this title, is registered or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful—

(1) For any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final—

(A) in seeking, accepting, or holding any nonelective office or employment under the United States, to conceal or fail to disclose the fact that he is a member of such organization; or

(B) to hold any nonelective office or employment under the United States; or

(C) in seeking, accepting, or holding employment in any defense facility, to conceal or fail to disclose the fact that he is a member of such organization; or

(D) if such organization is a Communist-action organization, to engage in any employment in any defense facility.

(2) For any officer or employee of the United States or of any defense facility, with knowledge or notice that such organization is so registered or that such order has become final—

(A) to contribute funds or services to such organization; or

(B) to advise, counsel or urge any person, with knowledge or notice that such person is a member of such organization, to perform, or to omit to perform, any act if such act or omission would constitute a violation of any provision of subparagraph (1) of this subsection.*

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*The prohibition against employment of members of Communist organizations is only one of many provisions along similar lines. Section 4 prohibits certain specified actions. Section 6 provides for denial of passports to members of Communist organizations. Section 7 provides for registration and annual reports of Communist organizations. Section 8 provides for registration of members of Communist-action organizations. Section 9 requires the Attorney General to keep a register of Communist organizations and to make reports to Congress and the President. Section 10 deals with denial of the use of the mails and instrumentalities of interstate and foreign commerce, and Section 11 to denial of tax deductions and exemptions for contributions to any organization subject to the Act. Section 12 establishes the Subversive Activities Control Board. Section 13 provides for proceedings before the Board and Section 14 for judicial review thereof. Section 15 provides penalties, which by Section 17 are in addition to and not in modification of existing criminal statutes. By Section 16 the Administrative Procedure Act is made applicable. Sections 18 to 31 amend a number of statutes, including the immigration laws and Alien Registration Act to bring them into conformity with the Internal Security Act.

APPENDIX II.

EXTRACTS FROM HOUSE REPORT NO. 2980 RECOMMENDING PASSAGE OF THE INTERNAL SECURITY ACT OF 1950*

Necessity for Legislation

The need for legislation to control Communist activities in the United States cannot be questioned.

Over 10 years of investigation by the Committee on Un-American Activities and by its predecessor committee has established (1) that the Communist movement in the United States is foreign-controlled; (2) that its ultimate objective with respect to the United States is to overthrow our free American institutions in favor of a Communist totalitarian dictatorship to be controlled from abroad; (3) that its activities are carried on by secret and conspiratorial methods; and (4) that its activities, both because of the alarming march of Communist forces abroad and because of the scope and nature of Communist activities here in the United States, constitute an immediate and powerful threat to the security of the United States and to the American way of life.

The Communist program of conquest through treachery, deceit, infiltration, espionage, sabotage, corruption, and terrorism has been carried out in country after country and is an ever-growing threat to the national security of this and other countries. There is ample evidence that one of the primary objectives of the world Communist movement, directed from within the most powerful existing Communist totalitarian dictatorship, is to repeat this pattern in the United States.

There is incontrovertible evidence of the fact that the Communist Party of the United States is dominated by such totalitarian dictatorship and that it is one of the principal instrumentalities used by the world Communist

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*Reprinted U. S. Code Congressional Service, 1950, No. 10, p. 4160.

movement, in its ruthless and tireless endeavor to advance the world march of communism.

The findings which support these conclusions, and the vast quantity of evidence on which they are based, are set forth in detail in the numerous reports which this committee and its predecessors have printed and circulated. Corroboration has been supplied by independent and exhaustive research by other committees of Congress.

Concern over this threat is not limited to the legislative branch of our Government. At the present time 30 of the 70 major countries in the world have outlawed the Communist Party. Many other countries have adopted various legislative decrees against communism, and since 1947 the trend has been toward declaring all Communist activities illegal. Panama was the latest to take such action. This action came in April of this year. The countries which have outlawed the Communist Party are as follows: Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, Haiti, Dominican Republic, Peru, Brazil, Bolivia, Paraguay, Chile, Portugal, Spain, Greece, Lebanon, Egypt, Syria, Iran, Transjordan, Saudi Arabia, Anglo Egyptian Sudan, West Bengal, Hyderabad, Madras, Burma, Siam, Malaya, South Korea, Formosa, and Malaya.

Concern over the Communist threat has not been overlooked by the different State legislatures. At the present time 33 States have laws against the displaying of the "Red" flag; 12 states have criminal anarchy laws; 16 have criminal syndicalism laws; 22 have sedition laws; 16 have laws against the Communist Party candidates appearing on the election ballot; 19 states exclude Communists from public employment; 28 States require loyalty oaths of all employees; and 20 States require teachers to take loyalty oaths.

APPENDIX III.

California Statute Requiring Loyalty Oath From Civil Defense Workers and Public Employees*

Section 1. Chapter 8 is added to Division 4, Title 1 of the Government Code, to read:

CHAPTER 8. Oath or Affirmation of Allegience for Civil Defense Workers and Public Employees

3100. It is hereby declared that the defense of the civil population during the present state of world affairs is of paramount state importance requiring the undivided attention and best efforts of our citizens. In furtherance of such defense and in the exercise of police power of the State in protection of its citizens, all public employees are hereby declared to be civil defense workers subject to such civilian defense activities as may be assigned to them by their superiors or by law.

3101. For the purpose of this chapter the term "civil defense worker" includes all public employees and all volunteers in any civilian defense organization accredited by the State Disaster Council. The term "public employees" includes all persons employed by the State or any county, city, city and county, state agency or public district, excluding aliens legally employed.

3102. Subject to the provisions of Section 3 of Article XX of the Constitution, all civil defense workers shall within the first 30 days of employment take and subscribe to the oath or affirmation required by this chapter.

3103. The oath or affirmation required by this chapter is as follows:

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitu-

*Cal. Stats. Ex. Sess. 1950, c. 7, approved October 3, 1950.

tion of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

"And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means except as follows:

.....

(If no affiliations, write in the words 'No Exceptions') and that during such time as I am a member or employee of the .....

(name of public agency)

I will not advocate nor become a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means."

3104. The oath or affirmation may be taken before any officer authorized to administer oaths.

No fee shall be charged by any person before whom the oath or affirmation is taken and subscribed.

3105. The oath or affirmation of any civil defense worker of the State shall be filed with the State Personnel Board within 30 days of the date on which it is taken and subscribed.

The oath or affirmation of any civil defense worker of any county shall be filed in the office of the county clerk of the county.

The oath or affirmation of any civil defense worker of any city shall be filed in the office of the city clerk of the city.

The oath or affirmation of any civil defense worker of any other agency or district shall be filed with such officer or employee of the agency or district as may be designated by such agency or district.

3106. Compliance with this chapter shall, as to state employees, be deemed full compliance with Chapter 4, Part 1, Division 5, Title 2 of this code, requiring taking of oaths by state employees.

3107. No compensation nor reimbursement for expenses incurred shall be paid to any civil defense worker by any public agency unless such civil defense worker has taken and subscribed to the oath or affirmation required by this chapter. It shall be the duty of the person certifying to public payrolls to ascertain and certify that such civil defense worker has taken such oath or affirmation.

3108. Every person who, while taking and subscribing to the oath or affirmation required by this chapter, states as true any material matter which he knows to be false, is guilty of perjury, and is punishable by imprisonment in the state prison not less than one nor more than 14 years.

3109. Every person having taken and subscribed to the oath or affirmation required by this chapter, who while in the employ of, or service with, the State or any county, city, city and county, state agency, public district, or

civilian defense organization advocates or becomes a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States by force or violence or other unlawful means, is guilty of a felony, and is punishable by imprisonment in the state prison not less than one or more than 14 years.

Sec. 2. Subject to the provisions of Section 3 of Article XX of the Constitution, all persons designated in Chapter 8, Division 4, Title 1, of the Government Code as civil defense workers, on the effective date of this act shall, within 30 days, take and subscribe to the oath or affirmation required by Chapter 8, Division 4, Title 1, of the Government Code. Any public employee who is on authorized leave on the thirtieth day after the effective date of this act shall take and subscribe said oath or affirmation within 30 days of his return to work.

Sec. 3. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 4. This act is an urgency measure necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

During the present emergency in world affairs loyalty and allegiance to the United States and the principles for which it stands are of utmost importance. Immediate assurance that persons in civil defense are loyal to this government and are not in fact advocates of its overthrow by force or violence is essential to the well-being of the State and Nation and the confidence of the people. It is therefore necessary that this act take effect immediately.